

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

YELLOW

Date: 1/23/90

Person to Contact: [REDACTED]

Surname: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

DEC 21 1989

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(9) of the Internal Revenue Code. For the reasons stated below, we conclude that you do not qualify for tax exemption under this section. Your protest rights are also explained below.

You were formed pursuant to a Trust Agreement dated [REDACTED]. Article I states that you were established to provide eligible employees with group dental benefits and that dental care consists of preventive, diagnostic, basic, major and orthodontic services as required to maintain or restore the covered persons dental health.

Members have a free choice of dentists. Dentists are not solicited nor contracted. The trustee pays for dental services on a fee for service basis.

Article IV states that each employer shall, pursuant to the plan, establish and direct a funding policy and with respect to each plan year, shall contribute to the trust such amounts as are estimated to be sufficient to fund the benefits provided.

In response to a letter dated [REDACTED], you state that the payments for the self-funded benefits are based upon the rates charged the insurance carriers providing the benefits. Future rates will be based upon the cost of paid benefits for each employer not to exceed [REDACTED]% of contributions plus [REDACTED]% for reserves and [REDACTED]% for administration expenses. All full-time employees are eligible to participate in the trust.

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[REDACTED]

Your members are employees of the following businesses:

[REDACTED]

In a letter dated [REDACTED], you state that you were established as a self-funded entity under ERISA in 1986 to provide benefits at lower costs to the participating members than would be available as a fully insured plan. Groups of employees are solicited by independent agents and brokers.

Your trustee is also an employee and officer of [REDACTED]. [REDACTED], is a regular corporation organized under the laws of the State of [REDACTED], on [REDACTED], to market dental benefits to individuals and groups. [REDACTED] is the employer plan sponsor for the purpose of performing all underwriting, marketing, issue and billing functions for the trust. The adopting employer is the plan administrator for the purpose of reporting employee eligibility, terminations and COBRA continuations. You state in a letter dated [REDACTED] that you amended your trust document to replace the original trustee by appointing additional trustees. However, your trust document does not provide for a minimum number of trustees; nor did you submit a list of the names of your new trustees.

Section 501(c)(9) of the Code describes a voluntary employees' beneficiary association ("VEBA") providing for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and in which no part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual.

In order to qualify for exemption under section 501(c)(9) as a VEBA, an organization must satisfy four requirements: (1) the organization must be an employees' association; (2) membership in the organization must be voluntary; (3) the organization must provide life, sick, accident or other benefits; and (d) no part of the net earnings may inure to the benefit of any individual, other than through the payment of benefits.

The only provision with which we are concerned is the requirement that the organization be an employees' association as this term is defined in the Income Tax Regulations. Section 1.501(c)(9)-2(a)(1) provides that the membership of a VEBA must consist of employees whose eligibility for membership is determined by objective standards which evidence an employment-related common bond among the employees. Typically, the employment-related common bond test is satisfied where a VEBA consists of employees of a common employer (or affiliated employers), employees covered under one or more collective bargaining agreements, or employees who are members of a common labor union or members of one or more locals of a national or international labor union. Additionally, the regulations provide that "employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related common bond for purposes of an organization through which their employers provide benefits."

You assert that the same line of business requirement is met in this case because you are governed by ERISA and your contributing employers are in the same line of business in the same geographical locale.

The "same line of business in the same geographic locale" language was retained in the final section 501(c)(9) regulations to ensure that an employment-related common bond exists among members of a VEBA. The employment-related common bond test thus serves to prevent the use of VEBAs by groups of unrelated employees merely to achieve insurance cost savings.

In National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979), the Supreme Court interpreted the term "line of business" to mean "either an entire industry . . . or all components of an industry within a geographic area." The term "industry" was previously defined by the Court in United States v. Continental Can Co., 378 U.S. 441, 444 n.2 (1969). The Court stated that employers whose major economic activity consists of the production or distribution of products or the provision of services having markedly similar characteristics, who employ similar production and marketing facilities, and who compete in the same markets may be considered to be in the same industry.

Under the definition discussed above, your employees do not have an employment-related common bond. Although you list your contributing employers as being in the construction industry, they are not classified as within the "same line of business" because they do not use similar production or marketing facilities, do not produce products or provide services

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having markedly similar characteristics and do not compete in the same markets. The employees of employers in these businesses therefore do not satisfy the employment-related common bond requirement of section 1.501(c)(9)-2(a)(1) of the regulations.

Furthermore, it appears that the only reason that you wish to qualify for exemption from federal income tax under section 501(c)(9) is to achieve insurance cost savings which the employment-related common bond test was created to prevent.

In addition, even if you are in the same line of business, you have not demonstrated that each employer that contributes to the trust has a membership which is composed of at least 90% employees and that you have not violated the limited membership prohibition.

Accordingly, we hold that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(9) of the Code. You are required to file federal income tax returns on Form 1041.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days from the date of this letter, in duplicate, and must be signed by one of your principal officers. When sending a protest or other correspondence with to this case, you will expedite its receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

You also have a right to a conference in this office after your protest is submitted. If you desire a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

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[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to the District Director, Baltimore, Maryland, which is your key district for exempt organization matters. Thereafter, any questions about your federal income tax returns or the filing of tax returns should be addressed to your key District Director.

Sincerely yours,

cc: [REDACTED]
Attn: EO Group

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

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